

TRADE SECRET PROTECTION

A trade secret is any formula, pattern, device, process, tool, mechanism, or compound of peculiar value to its owner (and his or her employees) which is not protected by a patent and is not known or accessible to others. Trade secret protection is governed exclusively by state law, but for all practical purposes, every state makes theft or unauthorized dissemination of a trade secret an unlawful act.

The requirements for trade secret protection are that the trade secret must not generally be known, its owner must gain an economic advantage from the trade secret, and its owner must take steps to preserve the confidential nature of the trade secret.

One of the major benefits of a trade secret is that there is no limitation as to length of time that the trade secret may be kept confidential. With a patent, the patent owner only has exclusive rights for the period of time after the patent issues until 20 years from the filing date of the application for patent, and there may be problems with policing one's patent rights. With a trade secret, as long as it is kept confidential, it will benefit only the owner of the trade secret. One good example of a trade secret is the formula for Coca-Cola®.

The courts will protect trade secrets if they are truly secret, substantial, and valuable. This type of protection is appropriate only for products or processes that cannot be discovered by any sort of "reverse engineering." In other words, the secret must still be undiscoverable even after the product is placed in the hands of the ultimate consumer and subjected to a thorough analysis.

This ability of others to reverse engineer trade secrets points out the main disadvantage of trade secret protection compared to patent protection. For example, if an invention is patented, even if others reverse engineer the product or obtain a copy of the patent, the patent gives the rights to exclude others from making, using and selling the patented invention. On the other hand, in the case of trade secret protection, others may freely attempt to discover a trade secret by reverse engineering the invention.